

Appendix XX

Overview of the Federal Advisory Committee Act (FACA)

In connection with the development and implementation of the Global Development Alliance (GDA), USAID proposes to consult with and seek the views of a range of outside parties. These consultations will be initiated by the GDA Secretariat as well as program bureaus and missions. Whenever USAID seeks the views of outside parties, consideration should be given to the potential application of FACA.

FACA (and GSA's implementing regulations) require that certain "advisory committees" be chartered, approved by OMB and GSA, give advance notice of meetings, have open meetings and publish minutes and comply with other public access requirements.

Generally speaking, an "advisory committee" under FACA is any group **not** composed entirely of full-time federal employees. However, FACA does not apply to committees that are established overseas and include non-US citizens.

One often hears that FACA does not apply to "one-time" meetings. There is no exemption under FACA for "one-time" meetings. Such meetings are usually justified on the grounds that individual, not consensus, views are being sought.

FACA only applies where the group is:

- **not** composed entirely of full-time government employees,
- established or **utilized** by the agency, and
- giving "consensus" advice, as opposed to individual views, to agency officials.

Thus, groups with private members (both established agency advisory committees and ad hoc groups) can meet with agency officials without having to comply with FACA to:

- receive information or advice;
- discuss internal scheduling and other non-advice matters; and
- discuss substantive matters and even proposed recommendations and advice, provided:
- such advice and recommendations are aired at a later public meeting of an advisory committee; or
- only individual views are sought from the public attendees and not a group consensus.

The more times a group meets the harder it is to argue that consensus advice is not being sought. If there is a need for a continuing dialogue on a particular subject, one approach is to create a subcommittee of an existing committee established under FACA. The membership of the subcommittee can be completely different from that of the parent. The subcommittee can meet without complying with FACA as long as the matter is finally considered by the parent committee at a public meeting.